

**THE CITY OF GARDNER
GARDNER, MASSACHUSETTS**

**POLICY AND PROCEDURES FOR THE ELIMINATION
OF SEXUAL HARASSMENT IN THE WORKPLACE**

I. PURPOSE

This memorandum establishes the policy of the City of Gardner regarding sexual harassment in the workplace by managers, supervisors, employees, vendors, contractors and the members of the public who use City facilities. This memorandum also describes examples of conduct that may constitute unlawful sexual harassment and sets forth a complaint procedure to be followed by persons who believe that they are victims of unlawful sexual harassment and/or retaliation due to sexual harassment complaint.

II. POLICY

The City's goal is to promote a workplace that is free of sexual harassment. The City fully supports the rights of all persons to hold employment in or enjoy access to the City of Gardner without suffering sexual harassment or discrimination. This policy applies to all phases of employment: including but not limited to recruitment, hiring, transfer, promotion, salary negotiations, training, and/or termination. Sexual harassment by managers, supervisors, employees, vendors, contractors and members of the public who use City facilities is unlawful and will not be tolerated. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.

III. DEFINITION OF SEXUAL HARASSMENT

A. The legal definition of sexual harassment

Sexual harassment is a form of sex discrimination that is illegal under both Title VII of the Civil Rights Act of 1964 and Massachusetts General Laws chapter 151B, section 3A and 4. These laws provide that unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature constitute sexual harassment when:

1. Submission to or rejection of such advances, requests or conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or a basis for employment decisions affecting the individual; or
2. Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

B. Examples of conduct that may constitute unlawful sexual harassment

Sexual harassment does not refer to conduct or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, and that fails to respect the rights of others. Sexual harassment occurs in a variety of situations that share a common element: the inappropriate introduction of sexual activities or comments into the work environment.

The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is affected by such conduct even though it is directed at another person. For example, the sexual harassment of one employee may create an intimidating, hostile, humiliating or offensive work environment for a co-worker. In addition, consensual sexual behavior in the workplace between two employees may be offensive to a third employee or result in favoritism that harms the third employee.

Sexual harassment often involves relationships of unequal power. Such situations may contain elements of coercion, such as when compliance with a request for sexual favors becomes a criterion for granting privileges for favorable treatment on the job. However, sexual harassment may involve relationships among "equals", such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person's ability to perform his or her work. Sexual harassment can also involve employees behavior directed at non-employees or non-employees behavior directed at employees.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment, depending upon the totality of the circumstances, including the severity of the conduct and its persuasiveness:

- repeated offensive sexual flirtation, advances, or propositions;
- continued or repeated verbal abuse or innuendo of a sexual nature;
- uninvited physical contact such as touching, hugging, patting, or pinching
- verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual;
- display of sexually suggestive objects, pictures, or cartoons;
- jokes or remarks of a sexual nature in front of people who find them offensive;
- gossip regarding one's sex life, comments about an individual's sexual activity;
- prolonged staring or leering at a person;
- making obscene gestures or suggestive or insulting sounds;
- the demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment;
- indecent exposure

C. Dispelling common myths about harassers and victims

Contrary to popular belief sexual harassment is not limited to prohibited behavior by a male employee towards a female employee or by a supervisory employee towards a non-supervisory employee. Sexual harassment can be found in any of the following less "traditional" situations:

1. A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.
2. The harasser does not have to be the victim's supervisor. He or she may be a supervisory employee who does not supervise the victim, a co-worker, or, in some circumstances, a non-employee such as a member of the public who used City facilities.
3. The victim does not have to be of the opposite sex from the harasser.
4. Sexual harassment does not depend on the victim's suffering an economic injury, such as losing promotion, as a result of the harasser's conduct. As the examples of improper conduct listed above show, sexual harassment can occur whenever unwelcome conduct of a sexual nature creates an intimidating, hostile, humiliating or offensive work environment.

IV. EMPLOYEE, SUPERVISOR AND MANAGER RESPONSIBILITIES

The City of Gardner shall administer this policy and accompanying procedures in the following manner:

A. The Personnel Department shall identify at least two investigators, one of whom shall be the Personnel Director. At all times there will be both a female and a male investigator.

B. All such investigators shall be trained in sexual harassment investigatory techniques. Such training shall include interviewing techniques and conflict resolution.

VI. SEXUAL HARASSMENT COMPLAINT PROCEDURES

If any employee believes that he or she has been subject to sexual harassment, the employee has a right to file a complaint. This may be done in writing or orally.

To file a complaint you must contact: Debra A. Pond, Personnel Director
Personnel Department
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440
978-630-4001

If an individual believes that he or she is being sexually harassed, the most immediate goal is to have the offensive conduct stopped. Individuals should:

- Firmly confront whoever is doing the harassing;
- State that his/her conduct offends, intimidates, and/or embarrasses you;
- Describe how that harassment negatively affects your work;
- Request that he or she stop the conduct immediately;
- Say things like: "Please don't touch me. I don't like it. It makes me uncomfortable."
- "I don't think jokes like that are funny. Please don't tell them when I'm in the room."
- "I'd like it much better if you'd comment on the quality of my work rather than the way I look."
- "My name is _____, not 'Honey'."

Confronting the harasser directly may be too intimidating or uncomfortable, particularly when the harasser is an immediate supervisor. If you feel you are unable to confront the harasser you should report directly to the Personnel Director.

VI. SEXUAL HARASSMENT INVESTIGATION

When the complaint is received, the allegation will be investigated promptly in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The investigation will include a private interview with the person filing the complaint and with witnesses. The investigator will also interview the person alleged to have committed sexual harassment.

When the investigation is complete, the Personnel Director will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the sexual harassment.

If it is determined that inappropriate behavior has occurred, the Personnel Director will act promptly to eliminate the offending conduct, and, where appropriate, recommend disciplinary action to the Appointing Authority.

V. DISCIPLINARY ACTION

Please note that while this policy sets forth the City's goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit the City's authority to discipline or take remedial action for workplace conduct which the City deems unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

A. If an investigation of a complaint of a sexual harassment reveals that an employee, supervisor, manager or department head has engaged in conduct constituting sexual harassment, disciplinary action will be taken. The disciplinary action taken will depend on the seriousness of the violation. Such action may range from counseling to termination from employment.

B. Any employee, supervisor, manager or department head who prevents or attempts to prevent any individual from making a complaint of sexual harassment, or fails to cooperate with or interferes in any way with the investigation of such a complaint, will be subject to disciplinary action.

C. Any employee, supervisor, manager or department head who retaliates or discriminates in any way against an individual who makes a complaint of sexual harassment or assists in the investigation of such complaint will be subject to disciplinary action.

D. Disciplinary action will be taken in accordance with the provisions of M.G.L. Chapter 31 and applicable collective bargaining agreements.

E. Any non-employee found to have committed an act of sexual harassment may be removed from City premises, or other appropriate action, including the filing of criminal charges, may be taken.

F. Any employee subject to sexual harassment has available civil and criminal remedies as well as a cause of action for sexual discrimination under Title VII of the Civil Act of 1964.

VI. STATE AND FEDERAL REMEDIES

In addition to the above, If you believe you have been subjected to sexual harassment, you may file a complaint with either or both of the government agencies set forth below. Using the City's complaint process does not prohibit you from filing a complaint with these agencies.

A. United States Equal Employment Opportunity Commission (EEOC)
1 Congress Street - 10th Floor
Boston, MA 02114
(617) 565-3200

Or

B. Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place - Room 601
Boston, MA 02108
(617) 727-3990